

THE
T R I A L
OF THE
Hon' R-----d N-----s,

Commander of One of his Majesty's Ships,

F O R
Perjury, Fraud, *and* Cowardice,

Before the Right Honourable the

L O R D *WISEACRE*;

A N D T H E
P L E A D I N G S for the PRISONER

B Y
Mr Serjeant *FULLBOTTOM*.

To which is prefix'd,

An O R A T I O N at the Opening of the Cause;
by Mr Serjeant *Fullbottom*, in Imitation of
the late Judge *P—ge*.

Taken in Short Hand by Order of the Court.

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1720

OF THE
FROM
THE BEQUEST OF
LEWIS JANSSEN WENDALL
1811

Prisoners, Fugitives, and Cowards

LORD WISEMAN

AND THE

PLEADINGS for the PRISONER

MAJESTY FULL BOTTOM

To which is added
an Oration at the Opening of the Court
by the Honorable Judge in Chief of
the said Court

Read in Short Hand by Order of the Court

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THE
T R I A L
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Hon^r R-----d N-----s, &c.

*An Oration at the Opening of the Cause, by
Mr Serjeant Fullbottom, in Imitation of
the late Judge P..e.*



Cannot contentedly bear myself;
and hear continued Invectives
from the Mouths of almost all
Sorts of People, nay, from the
most delicate of the Fair Sex;
and express'd in the most vehe-
ment and most malignant Manner, against
some of the most considerable Persons in this
Kingdom. I say, these ill-natur'd, or (if I
may be allow'd the Expression) ill-manner'd
Liberties, ought to be restrain'd: And I must

confess myself so far skill'd in the particular Laws relating to this Case, that I am persuaded, thro' a true Sensibility of the Purity and Wisdom of our Legislature, that there are in Force such Statutes as are capable of punishing, without Distinction, Favour, or Affection, all those Malignants, who spit their venomous Reflections at Persons of such illustrious Characters.

I now speak of certain Gentlemen who are under public Censure for their ill Conduct very lately in the *Med.....n*; and who now are under our present Consideration.

But among the many different Opinions and Remarks of those almost unanimous Complaints, I have not (in my Sense) observed one single Person that has critically or judicially considered, stated, or debated the Matter. Which is sufficient to prove, that the most worthiest of Men are liable to suffer in their Reputations, by the regardless Heat, various Recitings, and impetuous Partiality of public Report.

The Hearer or Reader of this Oration (perhaps one of those Delinquents I now arraign) may ask, Why is all this Preamble, without coming to the Matter? But let that wise Interrogator know, that no Treatise can be compleat without a proper Introduction. And I farther inform him (if he be not one that knows better Things) that I have a Right, according to the modern Method of Writing,

Writing, to wander away from the Path of my Story, and cram him with Allusions, hard Words, and false Rhetorick; that I could surfeit him with Quotations of *Greek* and *Latin*; make him sick with the Opinions of *French* and *Italian* Authors; then kill him with the immethodical Maxims of *W.....m A...e*, Esq, and afterwards bury him in the wild Confusion of this vast Chaos. I say, all this I could do, if I had but Art or Learning enough: But I am too ignorant to acknowledge the one, and too modest to pretend to the other.

Let it then suffice, that I have said all this by Way of Prelude; and now for the Kernel. I wish the Reader may find this Nut the worth his cracking, and that it may not prove canker'd within, by the ulcerous Habitation of a vile Maggot. However, I beg Leave to advise all Strangers to me, that I am an honest well-meaning Fellow, quite impartial and independent. I would not condemn one Side with the Run of the Multitude, nor acquit the other thro' vulgar Opinion. By which Declaration (and no-body appears to contradict it) I wisely apprehend, that I am sufficiently qualified to sit as President of this Court (that is, I mean a new Court of my own erecting) and to try and determine all Matters and Differences that may or shall appear before me.

And now I must beg my Readers to suppose, from this Moment, that the Court is

now sitting in full Form and all due Decorum ;
 of which he will be better informed hereafter.
 —And so much for my Introduction or
 Commission. Then, according to the Rules
 of my Authority, here I sit as Judge.

Now proceed we to Trial.

Here are Bills of Indictment found by the
 Grand Jury of these Ridings, against one
M.....ws, one *L.....k*, *R.....d* *N.....s*,
 and diverse other Persons. They are here
 prosecuted by a general Detestation and Ab-
 horrence of certain Crimes call'd *Fraud*, *Per-*
jury, and *Cowardice*.

Now the Question is (in order to proceed
 in a legal Method) Whether it be absolutely
 necessary to define or explain these Words
Fraud, *Perjury*, and *Cowardice*,—or let them
 rest and remain as they are commonly under-
 stood? — It is answer'd, No. That is to
 say, They are understood.

By this the Public may perceive how cau-
 tious and tender this Court is, in proceeding
 in a violent or illegal Manner.

Now, as here are many Offenders before us,
 it may not seem improper to observe to those
 in Court, that it is quite impossible to try any
 more than one at a Time. Then let it be
 voted by those present, which particular Pri-
 soner shall first Taste of our new Jurisdiction.

—Silence in the Court!—O, you propose
N.....s.—Very good: Call up *N.....s*.—

R.....d

R.....d N.....s, (three Times) hold up your Hand at the Bar. You, *R.....d N.....s*, stand indicted for Fraud, Perjury, and Cowardice: That is to say, for receiving certain Salaries and Perquisites from his Majesty's Offices and Subjects, and taking an Oath or Oaths faithfully to discharge your said Office and Duty; which Office and Duty was the Captainship or Command of a large Man of War and Company of his Majesty's Bruisers: Which Bruisers, under the Direction of their Commander, and in Conjunction with him, are to bruise, to the uttermost of their Power, all the Enemies of the Crown and Subjects of *Great Britain*. Now, it does appear, that at a certain Time, when you were commanded and directed to proceed with your Charge against the Enemies of this Kingdom, and to bruise them, that you did refuse or neglect the same, to the Disadvantage, evident Loss, and great Dishonour of the Crown and Subjects of this Realm: Urging, with Fear and Iteration, that you should *never see your Wife and Children more*. This was a poor Excuse, a poor Pretence, and a poor Expression indeed! And the more so, because it is too notorious that your Wife and Children could have no Weight in the Creation of that Fear, from this Circumstance: It is too flagrant, that at any Time of your Return and short Stay in any Sea-port of this Kingdom, that you, utterly forgetting your Wife and

A 4

Children,

Children, have sent Post-haste, for a certain *Courtezan* in *London*, to whom in particular you had bent or hook'd your lude Affections, and whose Name or Person is not unknown to us, and at the Expence of a Coach and Six, Attendance, Maintenance, Presents, &c, &c, must have wasted your Reputation, Substance, and Conjugal Affection. So it is plain that the Fear of *never seeing your Wife and Family more*, did not contribute to that Part of your Neglect of Duty.—It is further proved, that when your Commandment or Orders were brought and delivered to you, you burst into Tears; but not in Tears of Joy that you had Power and Leave to bruise his Majesty's Enemies, but thro' Fear and Cowardice; which was proved, demonstrated, and understood by your Disobedience and Omission.

Then thus it stands: Having proved you guilty of Fear and Cowardice, that Cowardice itself proves you and pronounces you likewise guilty of the other Accusations: That is to say, of Fraud and Perjury. For if you receiv'd your Wages for what you did not perform, you are and can be no less than a Cheat, and consequently guilty of Fraud. Then, lastly, by taking the Oath to be true to your Trust, and to do your Duty, which you absolutely refused or omitted, you are proved and understood to be guilty of willful
and

and corrupt Perjury. — What say you?
Are you Guilty or not Guilty?

O, you desire to be heard by Counsel!
Very well, you shall be indulged, and, believe, you will have no Reason to repent of that Petition to this Court, but be soon convinced of our Lenity and Justice. In Compassion for your Family, and other Motives, which I shall hereafter mention, I will take upon me to plead for you, in your Defence, and, perhaps, as eloquently and judiciously as ever a Counsel in this Kingdom can do. I mean according to the Rules of this our new Court. Therefore I shall inform you that I am not appointed President, or Advocate only, but likewise Counsel, Juror, Cryer, nay, (and if I find you guilty, after I have said all I can to clear you) I can't tell but I may be your Executioner too. — But however, now by Way as Counsel for you.

My Lord, I apprehend, according to the Rules of this Court, that I may be permitted to speak in Behalf of the Prisoner at the Bar. The Prisoner, my Lord, I apprehend, is not so guilty of those Crimes which he is charged withal, as your Lordship may be informed, or may conceive; for, with Submission to your Lordship, I apprehend that the Prisoner's Acceptance of the Charge or Office of Captainship was involuntary, and consequently not liable (by Justice) to this
severe

severe Censure of either Laws or Publick. In order, my Lord, to give this Court a clear Idea of Insight to the Matter, I shall endeavour to state the whole Case in a fair and proper Light.

The Court, or Board of Admiralty, my Lord, hath a Kind of absolute Jurisdiction within itself, and acts intirely independant of any other Power or Direction, but what proceeds directly from the Parliament, and therefore consequently not liable to answer or account to any other Court, but that of Parliament. The Prisoner at the Bar, my Lord, is properly within the Jurisdiction of the Admiralty only; not that I presume by this, that this Court is not sufficiently or properly warranted or qualified to try him. But, with Submission to your Lordship, I speak this in order to state the Case, in a regular Manner, and trace it methodically. Now, my Lord, I shall endeavour to shew why I mentioned the Prisoner's being particularly within the Jurisdiction of the Admiralty only, and what Advantages he may hope to reap from it.

I must beg Leave to observe to you, Brother *Fullbottom*, that your frequent Repetition of the Prisoner's being within the Jurisdiction of the Admiralty only, are high Reflections of our Authority and Proceedings, and too gross to pass me without my Resentment.

My

My Lord, I must beg your Lordship's Pardon, but your Construction of my Words were a little too harsh and heavy for my Meaning. I am satisfied, my Lord, that it is neither in the Will nor Power of this Court to act or proceed but in the most judicious and equitable Manner.

And those Assurances only have prompted me to apply to this Court, in Behalf of the Prisoner at the Bar. He is, my Lord, the Son of a Great Man, a very powerful Man, powerful in himself, I mean in respect to his high Station, being no less than first A of *England*, and L . . . d L . . . t t of all his Majesty's *British* and *Irish* Seas. I mean not, by saying this, my Lord, to intimate that the Guilt is less, but hope that the Prisoner is less guilty for this his Father's Greatness. And this I shall endeavour to demonstrate.

I shall observe to your Lordship, that his Father's being so powerful, or of so great Authority, hath very evidently contributed to, nay, I believe I may venture to affirm, has been the total and very Cause of this his Son's Transgression: And which I shall endeavour to prove by the following State of the Case.

Your Lordship will please to observe, that the Prisoner at the Bar was, by his Father's Direction, brought up to the Sea, we may say from his Childhood, to this very Day; in which Course he has past through all the several Degrees or Offices appointed and required

ed by either Laws or Customs; before he could arise to the Qualification for Commander of a Man of War; and was, from Time to Time, preferred and continued in the Service by the absolute Power and Authority of his Father; perhaps without any Regard to his Son's natural Inclination, Capacity, or Qualifications; and by that Time he arrived to the Age of about nineteen or twenty Years, or thereabouts, his Father being in the *Mediterranean*, Commander in chief of a very large Fleet; and being apprehensive of being soon called home, when the Prisoner at the Bar arrived to the Age I before mentioned (and he being then a Lieutenant in the same Fleet) his Father thought proper to advance him to the Rank and Dignity of Captain, while he had the Power and Dignity in his own Hands, which would prevent his being obliged to solicit the Favour from another, perhaps hereafter. Accordingly, my Lord, (we can be a little particular in this Point) a worthy Gentleman, and a Commander of a Man of War, whose Name was *Dr. r. l.*, quitted or laid down his Commission for a twenty Gun Ship, (though computed to be worth near a thousand Pounds a Year; the Captains at that Time being Purfers likewise of the same Ships) to make a Vacancy for this Preferment, which was accordingly filled up by the Admiral, with a Commission for the Prisoner at the Bar. And the other worthy Gentleman who resigned

signed to make him Room, was soon requited with a sixty Gun Ship for his Generosity, viz. the *Centurion*. In a few Months after this the whole Fleet (as the Admiral had wisely foreseen) was called home, and the Prisoner at the Bar was still continued Captain.

Now, my Lord, I apprehend that these Crimes which are charged against the Prisoner at the Bar, are properly his Father's only; and the Prisoner noways guilty. And this I shall endeavour to prove, I hope, to the full Satisfaction of the whole Court.

Perhaps, my Lord, this sudden Proposal may something startle your Lordship, but if this be a Court of Equity as well as Judicature, I doubt not in the least but to succeed. The Prisoner's Indictment charges him with Fraud, Perjury, and Cowardice. Now, my Lord, the Court hath already observed, that if he be found guilty of any one Particular of this Charge, he must, in Course, be guilty of the Whole. Then, my Lord, let us examine into that of Cowardice; and if he be found guilty of that, we will admit the whole against him; and thus, my Lord, with your Permission, we shall proceed.

It has been allowed, my Lord, amongst the Judicious, that it may stand as a settled Maxim with the prudent Fathers or Guardians of a Family, that they should or ought to study or enquire into the natural Inclination or Capacity of their Children, before they

they proceed to fix or settle them in any Employment or Business they are to spend their Lives in; and particularly it is more incumbent upon them to make such Inspection or Enquiry before they enter them into such important Trusts or Stations as this now under the Consideration of this Court. And, my Lord, had the Father of the Prisoner at the Bar, but took so much Pains, or thought to follow this noble Maxim or Example, he having such mighty Friends at Court, the Prisoner at the Bar might, in all probability, have made a great Figure in the Pulpit, and in a very few Years might arrive to the Honour of distinguishing himself in Lawn Sleeves. And this, my Lord, is frequently done with good Friends at Court, without the necessary Gifts of Oratory, Eloquence, or a happy Delivery. For Interest, Money, and Friends, my Lord, are generally looked upon to have the Advantage and Preference of Merit and Qualifications; nor is it now, my Lord, looked upon as an essential Necessity, that a Bishop is to be a Man of Learning, or of much, or any particular Religion; since Preaching, Writing, or Studying, are the smallest Parts of their Duty.

And I hope it does appear to the whole Court, that the Prisoner at the Bar, in all probability, would not only (in such a Station) have done all that lay in his Power to promote and further all Kinds of Peace,
which

which is the Foundation of all Tranquility, but likewise most heartily have prayed for it, which would have been a most laudable Example for all the other Clergy to have followed. And this zealous Promotion and Endeavour for Peace, which, I presume, in the Prisoner, must arise from his certain and undeniable Aversion to War. I say, my Lord, there is great Colour for what I have advanced from what has already appear'd; and I doubt not but, with your Lordship's Permission and Patience, to prove the full Intent of what I have propos'd before your Lordship and this honourable Court.

It is past all Dispute, my Lord, that Fighting was not his Talent, and I cannot help reflecting that, in my Opinion, he, the Prisoner at the Bar, has been most cruelly dealt by; I don't mean, my Lord, by this Process against him, but by the Behaviour of his much mistaken Father. I say, my Lord, his much mistaken Father, which Phrase, Word or Epithet, (mistaken) I explain as thus: It appears to me, my Lord, that that worthy Gentleman, the Prisoner's Father, has been mistaken in his own Judgment, in a double Sense; first in regard to his Son's natural Talent, and next in his own Motive, that induced him to place his Son in such a Station or Way of Life, that must needs hazard his Reputation, and must end with Shame: I say, my Lord, it must of Course end with Shame; for
though

though the Prisoner should be acquitted of the the Indictment now against him, yet the Shame will then *per* Force, retort upon his Father.

Yet thus much I will say in Behalf of that worthy Gentleman, that it is a Foible common to almost all the great Men in the Service of the Crown, to imagine, that because they have themselves been fortunate in their particular Occupations, and either through Friends or Merit are preferred from Time to Time, till at last they have clamber'd up to almost the Top of Fortune's Tree, they take it for granted, that all their whole Breed, by following their Instructions, may, likewise, in little Time, perch upon the same Boughs. I say, that vain and insolent Imagination is become a common Foible.

We'll suppose a General, my Lord, because he has been raised himself from perhaps little or nothing to that Rank, is confident that all his Sons may, in some Time, arrive to be Generals too. To which End, and with which View, he takes them early from their Schools, sometimes before they have learned to walk, or speak plain; and begins to impress into them high Notions of Honour and Grandure (but he often represents them with the wrong Side outward) as likewise little Hints of martial Discipline. He cloaths and arms them accordingly, and takes particular Care to equip them with a smart Cockade and
Snuff-

Shuff-box. This last Acoutrement, my Lord, is to give the young Prig a *jantee* Air, and help to establish him amongst the fair Sex : For it is now become almost a Rule amongst the modern Soldiers, that unless the young Hero can swear and drink, break Lamps, haunt Bawdy-houses, and use almost every Body ill, that he does not shew the promising Signs of a brave Soldier. Well, but with all these noble Qualifications, at perhaps the Age of about fourteen or fifteen Years, he is presented with a Pair of Colours ; and by that Time he has flourished and wav'd them six Months, he can handle his Cane like a Colonel, and break the Head of a brave old Fellow, that has ventur'd his Life in, perhaps, twenty Campaigns for his King and Country.

And to whom shall this poor Man apply for Satisfaction ? Is not this Thing an Officer ? And has the other been a Soldier twenty or thirty Years, and not been acquainted with the Honour and Pleasure of being beat by the General's Son ?

I am sorry, my Lord, that I have any Cause or Room to observe to this Court, that the greatest Part of our junior Officers both by Sea and Land are composed of such Butter-flies as these ; and when they are put to the Test and Proof of War and Manhood, if they behave in a natural Sense, who can

we blame more properly than these gross Silkworms their Fathers?

But, my Lord, if I had call'd them Spiders, I believe I had given them a much properer Appellation.

And, my Lord, I may further observe to your Lordship, that almost all the inferior Commissions of the Marine Regiments, instead of being bestowed on the brave, old, and experienced Serjeants, Corporals, &c, of Marching Regiments (whose Places would be again filled up by other deserving Men) they are sold or given for some paltry mean Service to the Son, Nephew, or insipid Relation of some ridiculous L..d, or worthless great Man, whose first Breeches are often regimental; and when they are put to Trial of their Parts, they shew the natural Courage of their Family, by hiding themselves in a Truss* of Hay, or any other Truss, that may shade their Sight from the dreadful Appearances of Smoke and Fire. And, my Lord, it is no Pleasure to me that I cannot help reflecting and observing to your Lord-

* Mr. *Ruffane*, Captain of Marines on board the *Lyon* Man of War, Captain *Brett* Commander, in an Action with a *French* Man of War of 64 Guns, the 9th of *July*, 1745, hid himself in a Truss of Hay, with a Corporal of the same Corps, till the Engagement was over.

ship,

ship, that our Nobility and Gentry who design their Sons for military Employment, totally forget or neglect the requisite early Study of Fortification and military Discipline. For it is daily seen, that our young Officers here in *London*, when it comes to their Turn to mount Guard, after being called up by a Servant, at Seven or Eight o' Clock in the Morning, and eating a good hearty Breakfast, are obliged to go through the Fatigue of riding in a Chair to the Coffee-house, where they are informed by the Sergeants of the Situation of their present Business. And there the Servant, or a Soldier, meets them with their Sash, Pike (and if it should happen that the Wind blows, or that it rains, with a Cloak too) where he, perhaps, refreshes himself with nothing better than two or three Dishes of Coffee, Chocolate, and half a Dozen middling Slices of Bread, or Toast and Butter; and so proceeds to his Charge, with which, after, perhaps, being under Arms very near the best Part of an Hour he marches most manfully from *St James's* to the *Tilt-yard* (I speak not particularly of the Guards) or from the *Tilt-yard* to *St James's*, where, after being under Arms almost half an Hour more, being very near spent, he (as soon as he can) hurries again to the Coffee-house, and revives his languid Spirits with a most voracious Regale:

after which they seldom, I mean any of them, scarce taste any Thing more till Dinner. And such Hardships as these, my Lord, our young Officers are obliged to undergo in their first setting out in their military Adventures.

The Court, my Lord, may perhaps think that I have rather tired than entertained them with any Thing relative to the Matter now before them; but I beg your Lordship's Pardon and Indulgence for a little longer, and hope to deserve it by a speedy Conclusion.

If I have been guilty of any Tautology, or launching out of the direct Road for Examples, Precedents, or Comparisons that might tend to the Advantage of my Cause, I appeal to Custom, and the Practice of all the Courts in the Kingdom for my Excuse. I believe, my Lord, that it is not usual for a Counsel to break off in the Midst of an Harangue to make such Apologies to the Bench, tho' they may have often more Reason for it. But as this is a Court of your Lordship's own erecting, and as yet but new in its Rules and Forms, I shall endeavour the most I can to establish its Power, and with the best of Manners.

What I have just now hinted, my Lord, I apprehend may very well and properly be applied in our present Cause; and therefore I shall

shall now, without any further Comparisons, immediately come to the Point.

I believe your Lordship will allow, that all Children in their Minority (and especially those who are no Ways else provided for) are in the absolute Power, Management, and Dependance of their Parents; and the more so, when they have a Prospect of a plentiful Fortune by their punctual Obedience, or that the Consequence of a Disobedience will be Disinheritance, Banishment, and Oblivion in all Kinds of Affection. This, we presume, your Lordship will conceive to be the Case of the Prisoner at the Bar.

His Father, my Lord, being the Head of the Rank of Ad....ls, knew that he could prefer him at Pleasure, and make any Thing of him belonging to the Sea, except a Fight^r; and that, my Lord, he could have no Reason to believe practicable: For if I may be allowed this Comparison, it is observed in the Breed of Fowls and Horses, that a true Game-Cock will never run, nor a true bred Horse will never suffer himself to be beat, if he can help it: And it is as contrary for a Craven-Cock to fight a good Battle, as it is for a Cart-Horse to run a good Race. It is a natural Observation, every Thing after its Kind. And, my Lord, I will do the old Gentleman this Justice, that I never heard

of any great Exploits he himself ever did, except two: The first was, that he undertook to beat a *Swedish* Squadron, which was out at Sea above a Fortnight before he set Sail from *England* in Search of them: And the other was, that, with no more than about thirty Sail of Men of War (most of them of the Line) he went to *Lisbon*, and staid about three Years to wait for the *Spaniards* coming there to engage him; and at last returned with all his Fleet safe and sound to *England*, to the great Joy and Surprize of every true *Briton*: For by his vast Successes, and great Fortune in all Enterprises, he had acquired the famous Appellation of *Foul-weather Jack*. And I think this Appellative, my Lord, was not ill given; for it was remarkable that he was so high a Favourite of Heaven, that he never departed from his Country, but the blessed Sun retired to mourn behind the Clouds, and the grieved Heavens wept down Showers of Rain. I remark this, my Lord, because I think that his Father had no great Reason to suppose him, the Prisoner at the Bar, a true Game-Cock: Not but they say his Mother is as good a Hen as ever was trod; and has so great a Respect for Courage, that she is ever exercising with her own Servants, and that the good-natured passive Ad——I can hardly keep Peace in his own House.

But

But, my Lord, what signifies the Mother's being of the fighting Strain, if the Father is not also. These cross Mongrel Breeds, my Lord, seldom produce any Good : Therefore, I observe this to your Lordship, to prove that the Prisoner's Father ought to have placed him in such a Station of Life, as was more likely to prove passive. But here, my Lord, the Prisoner at the Bar being totally within his Jurisdiction (and a Minor) he says to his Son, at the Age of Sixteen, Seventeen, or Eighteen Years, *You must be now a Lieutenant* : And again, a Year or two after, *Now you must be a Captain*. Pray, my Lord, supposing any of us, at this Time, in the Prisoner's Place; Does your Lordship imagine that we should refuse, and oppose a Father's Request in such a Case? No; I presume we should be joyful to embrace so honourable and beneficial an Employment, tho' we were never so deficient in our Qualifications. — Therefore it was the Father's Duty to judge and take Care of that Part. He ought not, my Lord, to have made his Son so considerable an Officer, without some Testimony of his Qualification and Courage. And, as I observed to your Lordship before, he had little Reason to expect to find the latter in him by Instinct; except by the Mother's Side, which, in all Probability,

SI

is more Smoke than Fire. But, my Lord, I apprehend that the placing of the Prisoner at the Bar in such a Post, in his Minority, (notwithstanding the Adm...l at that Instant might have the Good and Safety of his Country very much at Heart, which Consideration I leave to your Lordship) was a manifest Violence and Imposition upon the Prisoner. And thus I shall endeavour to explain it.

This Gentleman, the Prisoner, my Lord, was made a Commander by the Adm...l his Father, with no other View but to get his Son Riches and Honour: And as we were, at that Time, at Peace with all our Neighbours, the old Gentleman was willing to provide the Fleet with peaceable Officers, as far as in his Power lay; for at that Time he could have no Foresight of so sudden a War.

But he, I say, my Lord, makes his Son a Captain, and not being apprehensive of any War, forgets to mention any Thing to his Son about Fighting; but whether that Article was at that Time understood or not, my Lord, I shall not take upon me to say: But eight or ten Years after they come upon the poor Gentleman with a new Order; and all of a sudden salute him in his peaceful Mood, with the horrid and ingrateful Sound of, *Fight*. *Fight!* quoth the Prisoner, surprised

prised at so strange a Demand (or rather
 Command) I can't fight! Is there no
 Body else to go upon this dangerous Action
 but me? Must I be obliged to keep Com-
 pany with a vile mischievous Fireship, and
 rend my Ears with the foul Noise of these
 vulgar Guns? I can't bear the Thoughts
 on't; Besides, if I go, I am sure I shall
never see my poor Wife and Family more. At
 which Words the poor tender-hearted Gentle-
 man (I mean the Prisoner at the Bar) could
 not refrain from Tears. Many of those cruel
 Brutes perceived him weep; and so far from
 pitying or sympathizing with his Sorrow,
 my Lord, that they revil'd and scoff'd him
 for it: But it is a rough Behaviour, natural
 to these People, who, instead of approving
 his peaceable Inclinations, frown'd, and left
 him without revoking the cruel Order. And
 if he, the Prisoner at the Bar, my Lord,
 had not had more Prudence, at that Time,
 than those about him, he might have been in
 much Peril of having his Brains knock'd out.
 And because he refused to go, my Lord, as he
 was here directed, to endanger his Life, they
 accuse him of Cowardice, and would seek his
 Life here, pronounc'd against him in a Court
 of Justice by the Mouth of your Lordship;
 so that 'tis plain these Vultures would be
 glad of the Prisoner's Life at any Rate: But
 we hope that your Lordship will consider
 the

the Affair in a true Light, and disappoint those merciless Pursuers. For I submit to your Lordship, whether it be a pleasant Undertaking, or a judicious one, to run your Head into a roaring Cannon's Mouth, and venture your precious Life to pleasure a Parcel of resolute hard-hearted Men, who make no more of killing a thousand of their poor Fellow Creatures, than they would of eating as many Mackrel.

Then what must this poor Gentleman (the Prisoner) do, my Lord, at this unhappy Juncture, embarras'd as he was, and condemn'd as it were to immediate Death? It must open the Bowels of Compassion in all Christian and humane Men, and raise a Pity only but to think on't. We must, my Lord, conceive it horrible and dreadful for the Image of Death to appear in all his Terror before the Eyes of any Person who is not prepar'd, and so much afraid to die; and this, my Lord, we may suppose to be the true Case of the Prisoner at the Bar at that very Time. And, my Lord, I must further add, that it is a great Imposition upon any free-born *Englishman*, to offer to force or oblige him to fight against his Will: For, with Submission to your Lordship, how can we call ourselves a *Free People*, if we are, as it were, chain'd to the Oar of Slavery? Which, my Lord, I can construe no better in this Point, when

when one Man is under the absolute Dominion and Command of another, even to Death itself; and especially when his Life too is at Hazard for his Disobedience or Neglect. This, my Lord, is absolutely contrary to Freedom, and the Proceedings against the Prisoner at the Bar have proved it beyond any Dispute.

Now, my Lord, we'll suppose your Lordship will answer, That at that Time it was undoubtedly his Duty to fight. I say, my Lord, it was not understood so by him. And, my Lord, if I am rightly inform'd, they that were about him had no Reason to believe that the Prisoner either did, or would, or could understand it so; and this from a Circumstance of his former Behaviour: For some Time before this supposed Crime was committed, my Lord, he had given Testimony enough that he did not look upon Fighting to be either his Duty or his Talent. The Instance I speak of, my Lord, was this: That being with no other Ship upon a Cruize, he fell in with a pretty large Vessel, which, tho' not a tenth Part able to maintain a Fight against his Ship, he declined chasing her, and often intimated to his first Lieutenant, that he thought they could never come up with her, and therefore it was better not to attempt it, but to keep their Way. But this obstinate Man would by no Means be of his

his Opinion, but strongly insisted that they might easily take her in a very few Hours. The Prisoner, my Lord, being of a sweet Disposition, gave into his Lieutenant's Desire of pursuing the Vessel; and accordingly in a small Time came up with her. But he was no sooner within a convenient Reach of her, but this Lieutenant conceived a bloody and cruel Desire to fire his great unmannerly Guns at her, notwithstanding the poor Vessel was in no-ways a Match for him. The Prisoner, being very humane, my Lord, represented to his bloody-minded Lieutenant, that he thought it was better to let her pass quietly, and that he, in short, did not take her for an Enemy. But the Truth was, my Lord, that he did not want to hurt or distress the poor People; and tho' they were declared Enemies to his Country, his Humanity forbade such fell Ravage, Death, and Plunder, as he, the Lieutenant, so much wished for, who would by no Means be said nay: So, when the Prisoner found that nothing would satisfy this headstrong Man but fighting, he told him, if he thought he could take her, since he so much designed it, he might fight the Ship himself, and he, (the Prisoner,) would leave her to him, and go himself down into the Cockpit to the Surgeon, and see the wounded People taken Care of. For indeed, my Lord, he did not care to have the Blood of any of those innocent People to answer for. And
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he was no sooner departed from the Decks my Lord, as I have said, but this hasty Tyrant fell upon the Enemy with such Fury, that they were of Necessity obliged immediately to strike, and give up their Ship and themselves to his Mercy.

This, my Lord, was fully opposite to the Will and Desire of the Prisoner (tho' their Commander) as I have plainly shewn. Now, my Lord, this was sufficient to prove that the Prisoner had no natural Delight in fighting, and that the Blood of his Enemies was indeed hateful to him. I say, my Lord, if this had been presented to the Lords of the Adm---ty, (which, if it was not, it ought to have been) their Lordships would surely, I should think, not have acted such an unnatural and unlawful Violence upon any Officer in the Navy, as to have continued him in the Service, when it was evident, that the Duty required of him was contrary to his natural Inclinations and Talents.

It may be supposed, my Lord, that if he had been assured, and rightly inform'd that it was requir'd of him, and look'd upon as his absolute and undoubted Duty to fight, whenever he was commanded, or it should appear necessary so to do, that the Prisoner would probably, nay, most certainly, have declined his Commission, and chose some other Employment that he was more inclined to,

to, or fit for, rather than to have put his Life and Reputation in such Peril as they have, and do at this Time stand.

The Sum of all which I have laboured to explain to, or to gain from your Lordship, is only this, That the Prisoner at the Bar is neither guilty of Cowardice, Perjury, or Fraud, as has been alledged against him. For it pretty plainly appears, that he never designed or desired to fight; and that he never was properly instructed, that it was or ever would be required or expected from him.

Then, my Lord, it consequently follows, that if there was any Crime in the Prisoner's not fighting at *Toulon*, (for which he now stands indicted) it must, in all Justice and Reason, retort and rest upon his Father, who, my Lord, by Virtue of his parental Authority, obliged him to the Acceptance of an Employment, he was in no Respect qualified or proper for. And, I submit to your Lordship's Opinion and Judgment, whether, if the Prisoner at the Bar be honourably acquitted of Cowardice (as I mentioned to your Lordship at the Opening of the Cause) he be not also honourably acquitted of the other two Accusations now against him, *viz.* Fraud and Perjury.

Why really, Brother *Fullbottom*, I must confess that your Arguments, and stating
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of the Case, are quite within the Comprehension of Probability, Reason, and Equity: And therefore I shall leave it to the Consideration and Wisdom of the Jury, who, I doubt not, will well weigh all the particular Circumstances relating to the Cause, and give a candid and warrantable Verdict upon the same.

The Jury returned, and brought in their Verdict **NOT GUILTY.**

Then the Judge gave his Opinion according to Mr. Serjeant *Fullbottom's* Intimation, That the Prisoner's Father was guilty of a Breach of Duty and high Misdemeanor, in making his Son a Commander without sufficient Testimonies of his Qualifications and Courage; and that he ought to be broke of his Commission, and rendered incapable of serving as an Ad——l for the future.

After which the Court adjourned, and left the other two Prisoners to be tried by a Court Martial, when and where his Majesty should think proper.

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